

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

SALT LAKE CITY CORPORATION;
SANDY CITY CORPORATION; and
METROPOLITAN WATER DISTRICT OF
SALT LAKE & SANDY,

Plaintiffs,

v.

GLORIA M. SHEPHERD; IVAN
MARRERO; FEDERAL HIGHWAY
ADMINISTRATION; CARLOS
BRACERAS; TERIANNE S. NEWELL;¹ and
UTAH DEPARTMENT OF
TRANSPORTATION,

Defendants.

**ORDER AND MEMORANDUM
DECISION GRANTING MOTION TO
CONSOLIDATE**

Case No. 2:23-cv-893-TC

Judge Tena Campbell

FRIENDS OF ALTA; CRAIG HEIMARK;
INTERNATIONAL OUTDOOR
RECREATION ASSETT ALLIANCE; DR.
JEFF SCHMIDT; VICTORIA SCHMIDT;
MARGARET BOURKE; KIRK NICHOLS;
ALLEN SANDERSON; and FRIENDS OF
LITTLE COTTONWOOD CANYON,

Plaintiffs,

v.

UTAH DEPARTMENT OF
TRANSPORTATION,

Defendant.

Case No. 2:23-cv-876
Consolidated with Case No. 2:23-cv-893

¹ The court takes judicial notice that Ben Huot has replaced Terianne S. Newell as a Deputy Director in the Utah Department of Transportation and directs the Clerk of Court to update the case accordingly.

<p>CITIZENS' COMMITTEE TO SAVE OUR CANYONS,</p> <p>v.</p> <p>CARLOS BRACERAS and UTAH DEPARTMENT OF TRANSPORTATION,</p> <p>Defendants.</p>	<p>Plaintiff,</p> <p>Case No. 2:23-cv-894 Consolidated with Case No. 2:23-cv-893</p>
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Before the court is the unopposed Motion to Consolidate or Transfer (ECF No. 24) filed by Plaintiffs Salt Lake City Corporation, Sandy City Corporation, and Metropolitan Water District of Salt Lake & Sandy (the Municipalities). The Municipalities request that the court consolidate this action with two other pending cases: Friends of Alta v. Utah Department of Transportation, No. 2:23-cv-876 (the Friends of Alta case), and Citizens' Committee to Save Our Canyons v. Braceras, No. 2:23-cv-894 (the Save Our Canyons case). The Municipalities assert that all three cases arise from substantially the same factual circumstances and request substantially the same relief. Without consolidation, the Municipalities argue there would be a risk of conflicting rulings and a substantial duplication of judicial labor. For the following reasons, the court agrees and therefore grants the motion.

BACKGROUND

On July 14, 2023, the Federal Highway Administration, acting on behalf of the Utah Department of Transportation (UDOT), issued a Notice of Availability of the Record of Decision for the Little Cottonwood Canyon Project in Utah and Final Federal Agency Action, 88 FR 45268 (July 14, 2023) (Notice). The Notice announced the availability of the Record of

Decision and the conclusion of the Environmental Impact Statement (EIS) process under the National Environmental Policy Act (NEPA) for the Little Cottonwood Canyon Project (the Project). The Project is a series of improvements UDOT has planned to address traffic problems in and near Little Cottonwood Canyon. Among others, the improvements include enhanced bus service and tolling on State Road 210 (SR 210), parking changes, and the construction of a gondola and supporting infrastructure to provide a non-road means of accessing the Alta and Snowbird ski resorts at the upper end of Little Cottonwood Canyon.

Under 23 U.S.C. § 139(l)(1), any claims seeking judicial review of the ROD were required to be filed by December 11, 2023. Three lawsuits were filed in close proximity to this date, all objecting to various aspects of the Final EIS and ROD.

The Friends of Alta case was filed first, on December 4, 2023. (See Compl., ECF No. 2 in Case No. 2:23-cv-876.) The plaintiffs in this case claim that UDOT’s analysis and decision was “arbitrary and capricious” and failed “to comply with the procedural and substantive requirements of NEPA.” (Id. ¶ 22.) They “seek an order declaring that … by selecting Gondola Alternative B, UDOT has acted outside the scope of its delegated authority” (Id. ¶ 23.)

The Municipalities filed the above-captioned matter on December 11, 2023. (See Compl., ECF No. 2.) They challenge two agency actions taken in the ROD. “The first is the … decision to approve the collection of actions described as ‘Enhanced Bus Service Alternative.’ The second is the … adoption of ‘Gondola Alternative B,’ which commits the … Defendants to implement the gondola.” (Id. ¶ 7.) The Municipalities seek a declaration that UDOT and the other Defendants violated NEPA; they also seek an injunction prohibiting the Defendants from taking further action to implement the Project before filing a supplemental EIS and new ROD. (Id., Prayer for Relief.)

Finally, Save Our Canyons also filed their suit on December 11, 2023. (See Compl., ECF No. 2 in Case No. 2:23-cv-894.) Save Our Canyons seeks a declaration that UDOT and the United States Forest Service (USFS) “violated NEPA and its implementing regulations and also have acted arbitrarily, capriciously, and contrary to law under the APA[.]” (Id., Prayer for Relief.) The organization also seeks an injunction prohibiting “UDOT and USFS from taking any further actions in furtherance of this project until the UDOT has fully complied with federal law[.]” (Id.)

ANALYSIS

Rule 42 of the Federal Rules of Civil Procedure authorizes a court to consolidate cases that “involve a common question of law or fact[.]” Fed. R. Civ. P. 42(a). To decide whether consolidation is appropriate under this court’s local rules, the court considers whether the cases “(1) arise from substantially the same transaction or event; (2) involve substantially the same parties or property; (3) involve the same patent, trademark, or copyright; (4) call for determination of substantially the same questions of law; or (5) for any other reason would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges.” DUCivR 42-1(a). If the cases involve a common question of law, the court may exercise its discretion to consolidate. See, e.g., Dreger v. Progressive Leasing LLC, No. 2:23-cv-783, 2024 WL 115854, at *2 (D. Utah Jan. 10, 2024).

The court agrees with the Municipalities that these three cases involve the same central legal question: whether UDOT and related authorities complied with federal law when they issued the ROD approving the Project. The plaintiffs in the three cases are asking for substantially the same declaratory and injunctive relief. Moreover, these cases will all involve

review of the same administrative record. Accordingly, it will conserve judicial resources and reduce the risk of contradictory rulings for one judge to consider the three cases together.

The court therefore finds that consolidation is in the interest of fairness and judicial economy. As the Municipalities point out, consolidation should not prejudice the right of any party to litigate their individual claims and defenses. The court also acknowledges the request by the Defendants in this action to allow for briefs in excess of the page limits specified by this court's local rules if necessary for the Defendants to defend all the claims against them.

Cases are generally consolidated into the lowest-numbered case. See DUCivR 42-1(b). Here, the Friends of Alta case is the lowest-numbered case, but that case is currently pending before Magistrate Judge Jared C. Bennett. Because not all parties in the consolidated matter have consented to have a magistrate judge serve as the presiding judge, the cases will be consolidated into this (the Municipalities) action, which is the lowest-numbered case in which a district judge is presiding.

The consolidation of these cases does not affect the pending motion to dismiss filed by Defendants Gloria M. Shepherd, Ivan Marrero, and the Federal Highway Administration (ECF No. 23). Briefing for that motion should proceed according to the normal deadlines specified by this court's local rules.

ORDER

For the reasons stated above, the court ORDERS as follows:

1. The Plaintiffs' Motion to Consolidate Cases (ECF No. 24) is GRANTED.
2. Under Rule 42 of the Federal Rules of Civil Procedure, the court consolidates

Case No. 2:23-cv-876 (Friends of Alta v. Utah Department of Transportation) and Case No. 2:23-cv-894 (Citizens' Committee to Save Our Canyons v. Braceras) with Case No. 2:23-cv-893

(Salt Lake City Corporation v. Shepherd).

3. No further filings shall be made in Case Nos. 2:23-cv-876 and 2:23-cv-894. The court directs the Clerk of Court to administratively close these cases. All pleadings in those cases maintain their legal relevance.

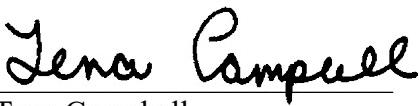
4. All papers previously filed and served to date in Case Nos. 2:23-cv-876 and 2:23-cv-894 are deemed part of the record in this consolidated action.

5. The Joint Motion for Extension (ECF No. 26) is GRANTED. The parties must file a proposed scheduling order within 30 days from the date of this order.

6. The court directs the Clerk of Court to change Defendant Terianne S. Newell to Ben Huot, who has replaced Ms. Newell as a Deputy Director at the Utah Department of Transportation.

DATED this 17th day of April, 2024.

BY THE COURT:



Tena Campbell
United States District Judge